HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 33-10

ORDER ON AGENCY'S MOTION TO DISMISS
AND APPELLANT'S REQUEST FOR INTERPRETATION OF SETTLEMENT

IN THE MATTER OF THE APPEAL OF:

LORETTA JAMES, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT
and the City and County of Denver, a municipal corporation, Agency.

By means of the above motions, the parties have submitted the question of interpretation of one of the settlement terms to the Hearing Officer.

This is an appeal of a 60-day suspension, defined in the disciplinary letter as equaling a 480-hour suspension. The relevant terms of the July 15, 2010 settlement agreement reduces that suspension to 45 days, and provides that the "City will reimburse LORETTA JAMES for 15 days pay", since Appellant had already served the entire 60-day suspension. [Agency's Motion to Dismiss, Exh. 2—2.] Pursuant to that settlement, the Agency paid Appellant the net amount of $1,649.83, which is $2,771.13 after taxes and payroll deductions. Appellant does not dispute that this payment constitutes 15 days of pay if "day" is interpreted as an 8-hour shift. She argues however that her day is and has always been a 10.32-hour shift.

The discipline which is the basis of the settlement agreement described the 60-day suspension as encompassing 480 hours. [Appeal, Exh. A-1.] The agreement states not only that the suspension shall be reduced to a 45-day suspension, but also that Appellant will be reimbursed for 15 of the days already served. Taken together, these terms indicate clearly that it was the intention of the parties to reduce the length of the suspension by one-quarter to settle the disputed discipline. Although the settlement does not include the parenthetical explanation of sixty days - "(480 hours)" - Appellant does not argue that she actually served a 619.2-hour (60 days times 10.32 hours) suspension, or that she reasonably assumed the Agency intended to reimburse her for more that one-quarter of the suspension, as would be the case if the word "days" was impliedly redefined by Appellant's actual shift. Appellant does argue that I should not consider the language of the suspension in interpreting the settlement agreement. However, Appellant presents no reason that would justify ignoring the actual discipline imposed in interpreting the settlement terms. I conclude that adopting Appellant's interpretation would not be consistent with the

settlement terms to reduce the suspension from 60 to 45 days, since it would reimburse Appellant for more than 19 days of the actual suspension.

Order

Based on the foregoing findings and analysis, it is ordered as follows:

1. The parties agreed in the settlement agreement that the suspension would be reduced from 60 to 45 8-hour days, as defined in the suspension and by the actual suspension hours served by Appellant prior to the agreement.

2. Since the Agency has fulfilled all terms of the settlement, Appellant is now required to move to dismiss the appeal by **January 31, 2011**. If the motion is not made or other cause presented for the failure to do so, the appeal will be dismissed.

DONE January 25, 2011.

Valerie McNaughton
Career Service Hearing Officer

I hereby certify that a copy of this Order was sent on January 25, 2011 in the manner indicated below to the following:

Loretta James, retta4ya2@msn.com	(via email)
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